

**UNITED STATES DEPARTMENT OF COMMERCE****Patent and Trademark Office**Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

MGS

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
-----------------	-------------	----------------------	---------------------

09/277,312 03/26/99 BUCKINGHAM

M 53836USA1A

IM22/1016

EXAMINER

DAVID B. PATCHETT  
3M OFFICE OF INTELLECTUAL  
PROPERTY COUNSEL  
P. O. BOX 33427  
ST. PAUL MN 55133-3427

HOKE, V

ART UNIT

PAPER NUMBER

1714

DATE MAILED:

10/16/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

<b>Office Action Summary</b>	Application No. 09/277,312	Applicant(s) <b>BUCKINGHAM</b>
	Examiner <b>VERONICA P. HOKE</b>	Group Art Unit <b>1714</b>
		

Responsive to communication(s) filed on Aug 1, 2000

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle* 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

**Disposition of Claim**

Claim(s) 1-15 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

Claim(s) 1-15 is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claims \_\_\_\_\_ are subject to restriction or election requirement.

**Application Papers**

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. § 119**

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been

received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

**Attachment(s)**

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

-- SEE OFFICE ACTION ON THE FOLLOWING PAGES --

Art Unit: 1714

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-12 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Welna (671) for the reasons stated in the office action mailed March 31, 2000.

Contrary to counsel's assertion (response at page 2, second paragraph) the presently claimed invention does not preclude the plastic substances from being a blend of rubber and unvulcanized rubber, as related on pages 5 and 6 of the specification. At page 6, lines 14-18, a blend of a thermoset resin such as curable or cured polymers such as rubber and a thermoplastic polymer such as ethylene vinyl acetate is specifically indicated. This corresponds to Welna's inclusion of the same type blend's use in col. 1 of the patent.

Furthermore Welna relates that the composition is a putty. This malleable state relates that flexibility is indeed inherent. The comparable fire sealing capability of the composition is clearly not an issue. Applicants maximum softness rating of 3.75 as compared with reference's minimum of 4.0 rating is clearly obvious since:

- 1) Applicants utilize the same technique in making softness evaluations ( applicant - pages 9 and 10 of the specification; Welna col.6, last paragraph through col.7).
  
- 2) Applicants only comparative flameproofing data is directed to a composition , Composition A, in Table III on pages 20-21, differing solely by its absence of graphite . This composition's LOI rating is as much as 23 % less than applicants. However the data's significance is elusive,

Art Unit: 1714

since Welna had already explicitly indicated ( col.5, lines 10-12) this particular combination as a desirable one.

Moreover the flame test was not conducted in-situ under the conditions of use as contrasted with Welna's testing in accordance with fire testing procedures in accordance with industrially recognized penetratable fire stop test standards ( cols. 7 and 8).

3) To settle for a lesser softness rating is not tantamount to establishing unobviousness because applicant has not in fact disproven, as erroneous, Welna's requirement of a softness rating of at least 4 mm in order to obtain satisfactory sealing, flameproofing and flow properties.

Claims 13-15 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Welna ( 671) as applied to claims 1-12 above, and further in view of Michaeli for the reasons stated in the office action mailed March 31, 2000

The response to this communication does not contain a traversal specifically addressing this rejection. In any event , the rejection over the primary reference , Welna, being maintained as explained supra, the finality of this rejection is considered proper also.

Art Unit: 1714

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

*Veronica P. Weber*  
VERONICA P. WEBER  
PRIMARY EXAMINER

vph

October 13, 2000

703 308-2444

Application/Control Number: 09/277312

Art Unit: 1714